IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.404 OF 1989

The State of Maharashtra .. Appellant.

V.

1. Bhagatsing Ishwara Nangare
   age 65 years ..

2. Shankar Sheku Nangare
   age 60 years ..

3. Sou.Banabai Ishwara Nangare
   age 65 years ..

4. Sou.Bhagirathi Bhagatsing
   Nangare, age 40 years ..

5. Sou.Anubai Shankar Nangare
   age 45 years ..

6. Ishwara Shekuji Nangare
   age 66 years
   All residents of Ghunaki
   Tq.Hatkanagale,
   Dist.Kolhapur .. Respondents.

Smt.A.S.Pai A.P.P. for the appellant.

Advocate for the respondents absent.

CORAM : SMT.RANJANA DESAI &
D.B.BHOSALE, JJ.

DATED : 10TH JUNE, 2005.

ORAL JUDGMENT: (PER D.B.BHOSALE, J.)

1. This appeal is filed against judgment and order dated 18th February, 1989 rendered by

Assistant Sessions Judge, Kolhapur in Sessions Case No.3 of 1987 acquitting all the six accused who were charged and tried for the offences punishable under sections 147, 148, 307 read with 149 of the Indian Penal Code. That was on the allegations that on 8.7.1986 at 10 a.m. they attempted to commit murder of Sarjerao by means of axe, sickle, kicks and fists blows. The alleged incident occurred near the land bearing Gat No.595 owned by one Baburao Chougule. Though the appeal was filed against the order of acquittal of all the six accused, this Court while admitting the appeal on 21.8.1989 had refused leave against accused nos.3 to 6 and in view thereof we heard the appeal only against accused nos.1 and 2.

2. The factual matrix that would be relevant and material for deciding this appeal against acquittal is that there was a dispute between original accused no.6 Ishwara and one Maku, father of the victim - Sarjerao and the complainant - Rangrao, over the sand and stones allegedly dumped by Ishwara on the plot of Maku. On 8.7.1986 the alleged incident occurred adjacent to land bearing Gat No.595. It reveals from the evidence of the sole eye witness Rangrao, and the victim - Sarjerao

that accused no.1 inflicted two blows, one on the neck and other on the back of Sarjerao and when Sarjerao fell down, accused no.2 inflicted one blow with sickle on his head. In so far as other accused are concerned, they allegedly assaulted Sarjerao with kicks and fists blows. Rangrao raised hue and cry and shouted for help when Dhondi Kerle and Sadashiv Bhanuse and others rushed to the scene of offence and on seeing them the accused persons fled. Thereafter, Sarjerao was removed to the hospital. Rangrao lodged the FIR. The investigation was carried out in pursuance of the complaint lodged and on completion of the investigation the chargesheet was filed against all six accused for the offence under section 147, 148, 307 read with 149 of the Indian Penal Code.

3. The defence propounded by the accused persons is of total denial. According to the accused, Sarjerao had assaulted Padmabai Mahadeo Nangare, close relative of the accused persons, with an intention of outraging her modesty and in connection with the said incident the offence was registered against Sarjerao and, therefore, he has falsely implicated the accused persons in the alleged incident. The trial Court, after

considering the entire evidence on record acquitted all the accused by the impugned judgment dated 18.2.1989.

4. The alleged incident is of 8.7.1986. It appears that pending trial and the appeal as well all the accused were on bail. The age of accused nos.1 and 2 in 1987, as reflected in the title of the judgment as also in the charge was 65 and 60 years respectively. Keeping that in view and considering the well settled position of law in dealing with the appeal against the acquittal, the question that arise for our determination is as to whether after 15 years the order of acquittal should be set aside. The Apex Court in **Tota Singh and Anr. V. State of Punjab AIR 1987 SC Page 1083** has observed that the jurisdiction of the appellate court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the court below is such which could not have been possibly arrived at by the Court acting reasonably an judiciously and is,

therefore, liable to be characterised as perverse. It was further observed that where two views are possible on an appraisal of the evidence adduced in the case and court below has taken a view which is plausible one, the appellate court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the court below on its consideration of the evidence is erroneous. This Court in **State of Maharashtra Vs. Haribhau Krishnaji Deshmukh and Others** had an occasion to consider entire case law on the point as settled by the Supreme of India in respect of appeals against the acquittal beginning with first available decision of the Privy Council reported in AIR 1934 PC Page 227 upto AIR 1996 SC 2478, observed that the High Court can interfere with the order of acquittal only when "(1) The appreciation of evidence by the trial court is perverse or the conclusion drawn by it cannot be drawn on any view of the evidence. (2) Where the application of law is improperly done. (3) Where there is substantial omission to consider the evidence existing on record. (4) The view taken by the acquitting court is impermissible on the evidence on record. (5) If the order of acquittal is allowed to stand it will result the miscarriage of justice".

4.1 Keeping this in view we heard learned A.P.P. The learned A.P.P. at the outset submitted that the findings of the trial Court atleast in respect of accused nos.1 and 2 are perverse. She invited our attention to the testimonies of P.W.4 Rangrao and P.W.5 Sarjerao to contend that their evidence coupled with recovery of blood stained clothes and the weapon is sufficient to bring home the guilt of accused nos.1 and 2. There was no infirmity worth mentioning in their evidence so as to discard their evidence. In so far as Sarjerao is concerned, she submitted that there was no reason for him to falsely implicate the accused, who assaulted him mercilessly, and that his evidence was absolutely natural and truthful so as to base conviction of the accused. She further submitted that there was sufficient inculpatory material on record such as the clothes of the accused, stained with blood and C.A.'s report which clearly shows that the blood detected on the clothes of accused no.1 matches with the blood of "A" group, the blood group of Sarjerao, recovery of incriminating articles etc. Our attention was also invited to the evidence of Dr.Baburao Ghatage P.W.3 to contend that his evidence supports the ocular

version. Based on this evidence she submitted that the judgment of the trial Court is perverse inasmuch as it only points to guilt of accused. In short, she submitted that the view taken by the trial Court was not reasonably possible.

5. We perused the entire evidence on record with the assistance of learned A.P.P. as also the judgment of the trial Court. On reappreciation of the evidence we found that the prosecution case rests on the evidence of nine witnesses, consisting of P.W.1 and P.W.2 panch witnesses who acted as panchas for the panchnama of scene of offence and recovery of axe at the instance of accused no.1. P.W.3 is Dr.Baburao Ghatage. He claims that he examined Sarjerao and issued the injury certificate. P.W.4 is Rangrao Siddha, the sole eye witness. He is also brother of the victim - Sarjerao. He claims that he had seen the alleged occurence and lodged the F.I.R. P.W.5 is the victim - Sarjerao. P.W.6 and P.W.7 Padmawati Nangare and Tanubai Kerle, respectively, examined by the prosecution were declared hostile. P.W.8 is A.S.I. Dundappa Chigare, who was on duty in the hospital when Sarjerao was admitted there. P.W.9 Amarnath Ingle is the investigating officer. Apart

from the oral evidence of the witnesses, the prosecution also relied upon the documentary evidence in the nature of C.A. report, panchnama of scene of offence, recovery of axe at the instance of accused no.1 etc.

6. To satisfy our conscience we scrutinised the entire evidence. On reappreciation of the evidence of P.W.4 Rangrao, eye witness to the occurence, and P.W.5 - Sarjerao we found several infirmities in their evidence, which create doubt about veracity of their testimonies. P.W. 4 - Rangrao states that accused no.1 inflicted first blow on the neck of Sarjerao with axe and the second blow on his back and when Sarjerao fell down accused no.2 hit him on the head by means of sickle and other accused assaulted with kicks and fists blows. He further testified that on seeing the attack he shouted for help when Dhondi Kerle and Sadashiv Bhanuse rushed to the scene of offence and on seeing them the accused fled. Thereafter, Sarjerao was removed to the hospital. In hospital, P.W.4 Rangrao reported the incident to the police and thereafter lodged complaint. In cross examination, he confirms that the first blow was given on the neck and other on back of Sarjerao by

accused no.1. He speaks about only three blows given by accused nos.1 and 2 with axe and sickle on the person of Sarjerao. He is very categoric in his examination in chief as also in cross examination while narrating the sequence of events. When we examined evidence of Sarjerao, we found several improvements, material discrepancies and inconsistencies in his evidence. Sarjerao, categorically states that accused no.1 inflicted first blow on his back and the second blow on his neck and thereafter he became unconscious. He does not state that he shouted "Melo Melo" as stated by P.W.4 Rangrao in the FIR. In fact, Sarjerao categorically states that after he sustained the two blows he fell down and became unconscious and does not know who assaulted him thereafter. The discrepancy in the evidence of these two witnesses in respect of the shouts by Sarjerao and becoming unconscious, the claim of Rangrao becomes doubtful. Either, he did not witness the occurence or in the court he is trying to support and corroborate the testimony of Sarjerao by making improvements. Both these witnesses further state that place of incident is surrounded by several huts and when they raised hue and cry several persons including Dhondi and Sadashiv rushed to the scene of offence.

However, the prosecution has not examined a single independent witness in support of its case. The medical evidence also does not support the ocular version of P.W.4 Rangrao and P.W.5 Sarjerao. P.W.4 speaks about only three blows inflicted by accused nos.1 and 2 and P.W.5 Sarjerao speaks about two blows only. However, according to P.W.3 Dr.Baburao Ghatage, Sarjerao sustained six injuries and all were incised wounds. According to Dr.Ghatage, injuries sustained by Sarjerao were possible by weapon like axe. No explanation is forthcoming either in the evidence of Rangrao P.W.4. or Amarntah P.W.9, Investigating Officer in respect of the other injuries sustained by Sarjerao. The trial Court after considering the testimonies of these two witnesses and of Dr.Baburao Ghatage and the Investigating Officer in paragraph 12, 13 and 14 has evaluated their evidence and has recorded reasons for disbelieving them. The relevant observation in paragraph 12, 13 and 14 reads thus:

> "12. ....As per the certificate the injured person was examined by Dr.Ghatage at 1.15 a.m. on 8.7.1986 and age of the injury was within six hours. The medical officer initially had stated that the injured persons was examined at 1.15 a.m. He also states that he was on duty at 1.15 a.m. on 8.7.86. The injury certificate (Ex.28) also reads that Sarjerao was

examined at 1.15 a.m., on that day. It is not that the medical officer was not aware as to what is meant by ante-meridiem and post meridiem times in the clock. This was ascertained by me by putting a Court question to the witness as to what was the time when he was being examined at Ex.27. The witness answered that it was almost 2 p.m. when the Court clock read 1.55 p.m. It means the witness was aware what he said and what he read. Case papers of the hospital regarding the admission of Sarjerao and treatment given to him is at Ex.29 and it also reads that Sarjerao was admitted in the hospital on 8.7.86 at 1.15 a.m. Somehow the medical officer appears to have realised something and he again said that the patient was examined at 1.15 p.m. on 8.7.86 and explained that the timing shown in the certificate at Ex.28 is wrongly mentioned as 1.15 a.m. and it should have been at 1.15 p.m. Case paper Ex.29 was written by this same medical officer Dr.Ghatage under his own hand and it read that the patient was examined at 1.15 a.m. It is, therefore, doubtful whether really Sarjerao was examined at 1.15 p.m. as subsequently stated by the medical officer or whether the person examined at 1.15 pm. by the medical officer was witness Sarjerao at all.

13. These doubts are not hypothecaldones. The reason is that neither Rangrao nor Sarjerao himself, speak anything about the injury on occipital region, left shoulder and two injuries on the back which are mentioned in the certificate at Ex.28. According to both of them. Bhagatsing hit Sarjerao on the neck and back one stroke each. If this is so, then there should have been only two injuries one on the neck and other on the back of Sarjerao. The third injury transparent from the deposition of Rangrao is on the head. Of course, we may assume that this third is mentioned in the certificate at Ex.28 as injury No.5. But Sarjerao is silent on this injury. Sarjerao says that he became unconscious with the first two injuries inflicted on

his person by Bhagatsing with the axe and so he did not know what happened thereafter. Assuming that it is so, still we find that Rangrao who claims to have seen the incident from a distance of 15 feet does not say that Sarjerao had fallen unconscious with the first two blows. On the contrary, we find in the first information report that after receiving two strokes of axe from Bhagatsing Sarjerao cried , "Died, died" ("Melo, Melo") and thereafter Shankar struck a blow of sickle on the head of Sarjerao. There is no mentino in the complaint that Sarjerao was unconscious. So, the say of Sarjerao that he fell unconscious is not acceptable.

14. There is, thus, apparent discrepancy in the evidence of Rangrao and Sarjerao regarding the injuries inflicted on the person of Sarjerao. Such discrepancy is more apparent in the medical certificate Ex.28 and the evidence of both Sarjerao and Rangrao. It is important to note that the Investigating Officer has not explained whether he made efforts of getting the sickle from accused No.2 Shankar. That sickle is not produced in evidence. As regards assaults given by other accused person, it is in evidence of Rangrao that the accused No.3 to 6 gave Sarjerao kicks and fist blows all over his body and Sarjerao says that he had swelling all over his body and he had shown said swelling to the medical officer after he had regained the consciousness. No such swelling is noted on his person by the medical officer either on 8.7.86 when Sarjerao was first examined or at any time thereafter.

7. We have scrutinised the evidence and the judgment of the learned trial Judge who had an opportunity of watching the demeanour of the witnesses and who made first, in appreciation of the evidence on record. He has given adequate

reasons for holding that the evidence of the witnesses is not enough to hold that the prosecution has proved beyond reasonable doubt the involvement of accused nos.1 and 2 in commission of the alleged crime. In our opinion, the view expressed by the trial Court is plausible inasmuch as the discrepancies, omissions and contradictions in the evidence of Rangrao and Sarjerao (P.W.3 and P.W.4) create sufficient doubt about their version.

8. In so far as the motive is concerned, it is needless to mention that the motive is always a double edged weapon. According to the prosecution, in the present case, on account of the incident of outraging modesty of Padmawati, the accused persons assaulted Sarjerao whereas according to the defence, on account of that incident the accused persons have been falsely implicated by Sarjerao and Rangrao. Sarjerao in his deposition has stated that sand and stones which was the cause of alleged incident were lying on the spot for 16-17 years prior to the alleged incident. Moreover, in the complaint as also in the statement of Sarjerao before the police they did not speak about motive at all. Therefore, in our opinion, the alleged motive would not help the prosecution to prove the

guilt of the accused. It has come in the evidence of Sarjerao that on the date of incident there was an incident of commotion in the marriage in Gopal community and in view thereof the suggestion was made to Sarjerao that he generated the commotion and in that he sustained injuries on his person. Though he has denied the suggestion keeping in view the overall conduct of the witness and the facts and circumstances of the case the learned Judge has expressed possibility that Sarjerao might have had been assaulted by Gopal community. We do not find any reason to interfere with this finding merely because other view is possible.

9. In so far as the recovery of the clothes of the accused and the deceased are concerned, though the blood stains on the clothes of the accused match with the blood group of the deceased, the accused cannot be connected with the alleged offence for more than one reason. Firstly, the blood group of the accused had not been determined and brought on record by the prosecution, and secondly, in view of our findings on the evidence of P.W.4 and P.W.3 the evidence in the form of recovery of incriminating articles and C.A. report looses its significance. Moreover, the prosecution

has miserably failed on the recovery of weapon. P.W.2 Chandrakant, who acted as panch for the recovery panchnama has categorically stated in the cross examination that the memorandum of the panchnama was already kept ready when he reached the police station and he simply signed the same. He has further stated that he was sitting in a jeep when the accused went alongwith the police to recover axe from his hut. He has also stated that the panchnama and the memorandum both were written at Vadgaon police station. The learned Judge has rightly disbelieved this witness and has discarded the evidence of recovery of weapon. We find absolutely no reason to disturb the findings recorded by the learned Judge.

10. On appreciation of evidence, in our opinion, the learned trial Judge has rightly come to the conclusion that the prosecution has failed to prove the guilt of the accused. We have reappreciated the evidence satisfying our conscience and to find out whether findings and the conclusion arrived at by the trial Court are perverse. The view taken by the trial court is possible on the evidence on the record. In such state of affairs we confirm the finding recorded by

the trial Court. In our opinion, these findings are not perverse. There is no ground to interfere with such well balanced order of acquittal made on proper appreciation of evidence on record. We, therefore, dismiss the appeal against acquittal. We, hereby confirm the order of acquittal. Bail Bonds, if any, executed under section 390 of Criminal Procedure Code stand cancelled.

(SMT.RANJANA DESAI, J.)

(D.B.BHOSALE, J.)

HIGH COURT AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.404 OF 1989

Date of Decision: 10th June, 2005.

For approval and signature:

The Hon'ble Smt. Justice : Ranjana Desai

And

The Hon'ble Mr.Justice : D.B. Bhosale

1. Whether Reporters of Local papers may be allowed to see the judgement ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Office?